

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

**DUSTIN RIGGIO, individually, and in
his representative capacity as
Administrator of the Estate of Kim
Mills, deceased, and on behalf of all
wrongful death beneficiaries of Kim
Mills, deceased**

PLAINTIFF

v.

CAUSE NO. 1:18CV218-LG-RHW

**ISREAL PRUNEDA; SMC
TRANSPORT LLC; WERNER
ENTERPRISES, INC.; and
JOHN DOES 1-5**

DEFENDANTS

ORDER DENYING PLAINTIFF'S FIRST MOTION IN LIMINE

BEFORE THE COURT is the [233] First Motion in Limine filed by Plaintiff Dustin Riggio, seeking to exclude police officer Chris Wagner's testimony concerning the speed of Defendant Isreal Pruneda's tractor-trailer at the time it was rear-ended by Kim Mills' vehicle. Riggio contends that Officer Wagner did not see Mills' vehicle long enough to form a valid opinion about its speed, and therefore any such testimony would be inadmissible speculation. The Motion has been fully briefed. After due consideration of the submissions and the relevant law, it is the Court's opinion that Officer Wagner should be allowed to testify about his observations.

"Mississippi case law has recognized that a lay person is competent to offer an opinion as to the rate of speed of a moving car. However, such testimony must pertain to the speed of the offending vehicle at the time, or just prior to the

collision.” *Moore v. State*, 816 So. 2d 1022, 1028 (Miss. Ct. App. 2002) (internal citations omitted). Officer Wagner saw Mills’ vehicle only momentarily, but he had been at the side of the highway for approximately fifteen minutes, during which time he was generally observing the speed of traffic. (Wagner Dep. 27, ECF No. 179-3.) He should be allowed to give his opinion that compared to Pruneda’s speed, Mills’ vehicle was traveling “closer to the speed limit – 70.” (*Id.* at 34-35.) *See Heflin v. Merrill*, 154 So. 3d 857, 863 (Miss. 2014). The jury may give Officer Wagner’s testimony the weight they find appropriate after considering his opportunity to observe the speed of Mills’ vehicle.

IT IS THEREFORE ORDERED AND ADJUDGED that the [233] First Motion in Limine filed by Plaintiff Dustin Riggio is **DENIED**.

SO ORDERED AND ADJUDGED this the 12th day of December, 2019.

sl/ *Louis Guirola, Jr.*

LOUIS GUIROLA, JR.
UNITED STATES DISTRICT JUDGE